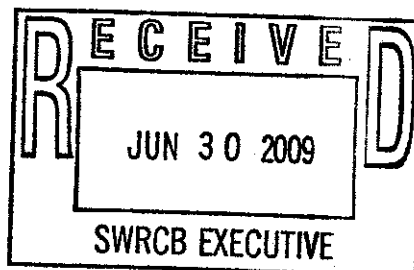


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A Strategic
California Merger
with Hatch & Parent



June 30, 2009

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VIA ELECTRONIC MAIL (COMMENTLETTERS@WATERBOARDS.CA.GOV)

Members of the State Water Resources Control Board
c/o Ms. Jeanine Townsend
Clerk to the State Water Resources Control Board
1001 I Street, 24th floor
Sacramento, CA 95814

RE: Comment Letter on Draft (06/18/09) General Waste Discharge Requirements for Landscape Irrigation Uses of Municipal Recycled water Landscape Irrigation General Permit

Members of the State Water Resources Control Board:

This comment letter is being offered for your consideration by the City of Oxnard ("City") in regards to the Draft (06/18/09) General Waste Discharge Requirements for Landscape Irrigation Uses of Municipal Recycled water Landscape Irrigation General Permit. ("Draft (06/18/09) General Permit") Again, the City thanks the State Water Resources Control Board ("State Board") for its leadership in developing this Draft (06/18/09) General Permit as required by Water Code §13552.5 (AB 1481). Further, the City would like to thank the State Board for making many substantive and important changes in this current draft which go a long way to clarify issues of concern as set forth in the numerous comments submitted. The City does, however, remain concerned about certain changes made which raise uncertainties.

This letter will serve to supplement the City's prior comment letter dated April 27, 2009. Where the prior version of the General Permit has not been changed by the Draft (06/18/09) General Permit; and where the City has expressed concerns over the prior draft in its comments, the City will not comment again but maintains all rights related thereto.

Since the April 27th letter, the City continues to add facilities and operational management techniques to the GREAT Program which is one of the cornerstones of the City's long-term water future.

1. **General Comments**

(a) **Safety**

The Draft (06/18/09) General Permit has lessened the City's concern about how the State Board views the safety of recycled water by the changes made. However, the City's reading of the changes made still indicate a certain level of discomfort with the concept that recycled water is safe. The basis for some of the various prohibitions and actions required can only be based on an assumption that a hazardous substance or condition does inherently exist with recycled water. This is certainly not the case with the recycled water to be supplied by the City (which employs include microfiltration, reverse osmosis and advanced oxidation), nor does the City believe it should be a matter of concern with tertiary treated water. That water is deemed safe by California Department of Public Health ("CDPH") for the intended and permitted uses covered by the Draft (06/18/09) General Permit.

2. Specific Concerns

(a) Waste Discharge Requirements (Finding 2; Provision C-19)

Finding 2 asserts that if the City were to seek coverage under the General Permit, it no longer needs to "remain subject to the applicable provisions of existing waste discharge requirements or water reclamation requirements." What the term "applicable provisions" means is unclear. That is, it does not appear that enrollment under the General Permit removes all the requirements of the WDRs or any reclamation permit. If that is the case, at a minimum, the following needs to be answered:

- Who makes the determination?
- How do any differences of opinion get resolved?
- Is the WDR or reclamation permittee free from penalties for acts taken in good faith which they believe are consistent with the General Permit and are "applicable provisions?"

Provision C-19 which states:

Upon enrollment in this General Permit, if the enrollee is subject to individual waste discharge requirements or water reclamation requirements, the provisions of such requirements are null and void to the extent that the discharge is regulated by this order.

The Provision restates the Finding but in a different way, but places the enrolled entity in a more difficult position because it requires the permittee to determine what is and is not null and void in their WDR or reclamation permit. The same questions need to be answered as raised above. The City believes this will create a great deal of confusion, inefficiency, and delay.

Another question that must be answered is how and in what manner, and upon what authority can the State Board render a WDR or reclamation permit, or any part thereof, null and void. In other words, will a permittee who in good faith makes a decision about consistency or inconsistency ultimately be required to change that decision, which could have numerous consequences, because the State Board acted outside of its scope of authority?

Given these and other comments herein, the City will likely continue the GREAT program under the existing WDR and related permits for as long as possible, unless further clarification or changes are made.

(b) Chemicals of Concern (Findings ¶19-22; Definition (g))

Definition (g) in the Draft (06/18/09) General Permit has not solved the problem that without question, virtually every known, and even unknown substance, qualifies as a Chemical of Concern. This is of significant concern when phrases such as "not commonly monitored," "cause known or suspected adverse ecological and/or human health effects" are used. Such a vague and uncertain standard opens a plethora of problems for planning, operations, and possibly protection from liability. No City, let alone any other public or private entity, can or should put itself in a position (or be put into that position),

where it is deciding what is and what is not a Chemical of Concern. In California the agency with that responsibility is the CDPH.

The City acknowledges that the Water Recycling Policy has set forth a program of research of Chemicals of Concern through an Advisory Panel. As that Panel makes some determinations, their findings will be brought before the State Board for consideration. The City assumes that from those findings, a decision made in public with public input can be made to require monitoring of a particular substance, or add the substance to an action list. It would also allow the CDPH to provide its input and opinion as well. But there is nothing in the Water Recycling Policy nor in the Draft (06/18/09) General Permit that suggests the work of the Panel will be reviewed specifically to comment on the use of water with a particular Chemical of Concern in it for landscape irrigation as opposed to any other use. The Draft (06/18/09) General Permit should be revised to include a plan that permits the Advisory Panel to perform its work and bring before the State Board its findings specifically as to landscape irrigation.

(c) Supervisor (Provision ¶ C-5-f(ii), (iii))

The Provision C-5- f(ii) states:

Recycled Water Use Supervisor responsibility and training.

A copy of an example duty statement for the Recycled Water Use Supervisor responsible of the Use Area.

It appears that the word "example" should be "exemplar," but even assuming this, what does this mean? The City assumes that the responsibility is that the O&M plan should contain this copy, but it is not clear.

The Provision C-5-f(iii) states:

Verification that the Recycled Water Use Supervisor has attended training regarding the safe and efficient operation and maintenance of recycled water use facilities.

Again, the City assumes that the responsibility is that the O&M plan should contain this copy, but it is not clear. Further, to the extent that the "training regarding the safe and efficient operation and maintenance of recycled water use facilities" is meant to set up some criteria, as opposed to those outlined in f(i), this creates some confusion.

The City believes that the O&M Plans, on this point, should contain a clear recital that the Recycled Water Use Supervisor should be trained at a minimum on the various topics of concern; and that the O&M Plans should contain an exemplar of the tasks that the Recycled Water Use Supervisor should do daily, weekly and monthly; and lastly be updated by some type of verification of compliance by the Recycled Water Use Supervisor with the requirements.

However, the Recycled Water Use Supervisor minimum training requirements should be moved to the "Definitions" and should state:

Recycled Water Use Supervisor: A person or persons who at a minimum shall have such training to comply with this General Permit.

1. *The safe and efficient operation and maintenance of recycled water use facilities.*
2. *Prevention of runoff from Recycled Water Use Areas.*
3. *Matching irrigation rates to the water requirements of the landscape, and not applying when the soil is saturated.*
4. *Means for ensuring recycled water and other supplemental nutrients (including fertilizers) are used pursuant to the Irrigation Management Plan (i.e. at agronomic rates)*
5. *Prevention of cross-connections with potable water systems.*

(d) Leak Detection (BMPs (I)(A))

In the prior draft, the detection limit was 50,000 gallons. In the Draft (06/18/09) General Permit, the leak detection limit is set at 1,000 gallons. The City urges the State Board to consider the expense and technical ability to effectuate this requirement. In this same review, the State Board should consider that the water in question is deemed to be safe by CDPH and thus, the level of concern should be ameliorated. The City would urge the language be changed back to 50,000 gallons.

3. Errors

(a) Prohibition on Use of Recycled Water (Prohibition ¶A-5)

The Draft (06/18/09) General Permit states:

The use of recycled water for uses other than landscape irrigation uses is prohibited.

The City believes that this was edited in error to read as a complete prohibition against the use of recycled water for anything other than landscape irrigation. The City believes that this error should be corrected by rephrasing the sentence as:

The use of recycled water under this General Permit for uses other than landscape irrigation uses is prohibited.

(b) Definition (t)

The word "water" was inadvertently left out. It should read:

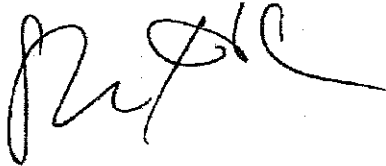
Recycled Water Use Area (Use Area): An area where recycled water is to be used....

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4. **Conclusion**

The City believes that while issues still remain with this Draft (06/18/09) General Permit, the improvements made through the comment period and post hearing meetings have been most beneficial to moving forward the requirements of AB 1481.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SLH', is written over the closing text.

Steven L. Hoch
Brownstein Hyatt Farber Schreck, LLP

SLH:ibc

cc: Mr. Ken Ortega
Mr. Mark Pumford